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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,397	04/19/2004	James Durham	H311030USCOM	9914

28079 7590 12/13/2006

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CANADA

EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
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3782

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/826,397	DURHAM, JAMES	
	Examiner	Art Unit	
	Justin M. Larson	3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 and 3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 and 3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viio (4,809,894 A) in view of Estabaya (US 6,994,238 B2).

Viio discloses a holder for an electric drill (col. 2 lines 46-50), said holder comprising a length of rigid wire shape to have a generally U-shaped horizontal base (10) having laterally spaced side portions connected by a bight portion at the rear, the base having an open front end facing forwardly, the side portions having ends remote from the bight portion extending into respective substantially vertical laterally spaced upright portions (13,14), and at least one of the upright portions extending at its upper end into a reverse bend (15,16) a downwardly extending clip portion (17,18) adjacent to the respective upright portion.

Viio teaches that the drill holder is attached to the user's apparel, but fails to specifically state that the drill holder is attached to a user's belt or waistband. Viio also fails to recite the claimed components of an electric drill and the specific manner in which the drill is supported by the holder.

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Regarding the holder being attached to a user's belt or waistband, Estabaya also discloses a drill holder having a bight (18) with an upright vertical arm having a bent clip portion and teaches that the bent clip portion is attached to a user's belt. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attached the drill holder of Viio to a user's belt, as taught by Estabaya, in order to allow a user wearing a belt to support their drill thereon while not being used.

Regarding the manner in which a drill is supported by the holder, Estabaya teaches that the drill is placed in the holder such that the handle extends downwardly through the base until the battery compartment (BH) catches within the bight of the base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place a drill in the holder of Viio such that the handle of the drill extended downwardly through the base until the battery compartment caught within the bight of the base, as taught by Estabaya, in order to effectively support the drill within the holder. Examiner is of the position that when the battery housing of the drill becomes caught in the bight of Viio, it would certainly engage the upright portions of the holder. The battery housing is larger than the U-shape of the bight and would therefore contact any vertical structure protruding directly vertical from the U-shaped bight, such as the upright portions of the holder.

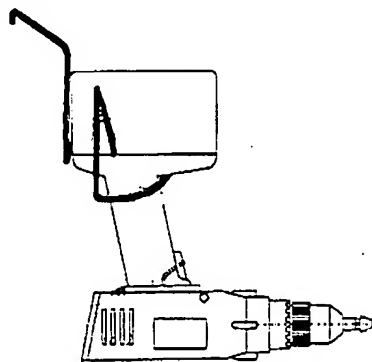
Regarding the specific components of the electric drill, because Applicant has not traversed Examiner's assertion of Official Notice, the fact that it is old and well known in the art for electric drills to have motors, chucks, handles, and batteries is taken to be admitted prior art.

Response to Arguments

3. Applicant's arguments filed 11/20/06 have been fully considered but they are not persuasive.

Applicant has asserted that the open end of the base of Viio's device faces laterally inwardly towards the user's leg when in use, not forwardly as in Applicant's invention. Examiner is of the position that while the open end of the base of Viio's device faces laterally inwardly towards the user's leg when in use, the open end can be considered to face forwardly. Applicant has failed to clearly define the directional relationship and orientation of the holder with respect to a user such that the orientation or direction can only be interpreted in one way. The term "forwardly", without any point of reference or origin, can be interpreted to refer to any direction, as that direction will be forward of some point of reference or origin.

Applicant has asserted that it is not clear how the device of Viio could be used to hold a drill of the kind specified in claim 2. Examiner presents the following figure in an attempt to more clearly illustrate the use of the Viio device based on the teachings of Estabaya as set forth in paragraph #2 above.



Applicant has asserted that his invention provides a much more convenient arrangement than the arrangement's taught by Viio and Estabaya. Examiner is of the position that while Applicant feels his invention is more convenient, the claims as currently presented set forth no structure to clearly read over the device of Viio being used to support a drill in a manner similar to that taught by Estabaya.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML
12/7/06


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER